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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,195	10/03/2006	Christopher Lyndon Higgins	ABAC0101PUSA	9579
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BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			EXAMINER KIRSCH, ANDREW THOMAS	
			ART UNIT 3781	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/567,195

**Applicant(s)**HIGGINS, CHRISTOPHER  
LYNDON**Examiner**

ANDREW T. KIRSCH

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/21/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because it contains the term "said" and the clause "the invention relates to..." It is suggested that the term "said" be replaced by "a/an," and the clause "the invention relates to" be replaced with "A closure for a container, and more particularly..." Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

2. Claims 1, 18, 22, 30, and 38 are objected to because of the following informalities:
3. Claim 1 contains vague use of a comma "such that upon rotation of said closure to remove, said closure from said container...";
4. Claim 18 lacks proper antecedent basis for the term "said ramped projections" which are not mentioned in either claim 17 or claim 1;
5. Claim 22 as written is dependent upon itself (for the purposes of examination it will be assumed as dependent upon claim 21);
6. Claim 30 contains the wording "takes the form of an one or more recesses";
7. Claim 38 contains the wording "the distance between the an engagement...", for the purposes of examination, examiner will omit the second "the" from the phrase.
- Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

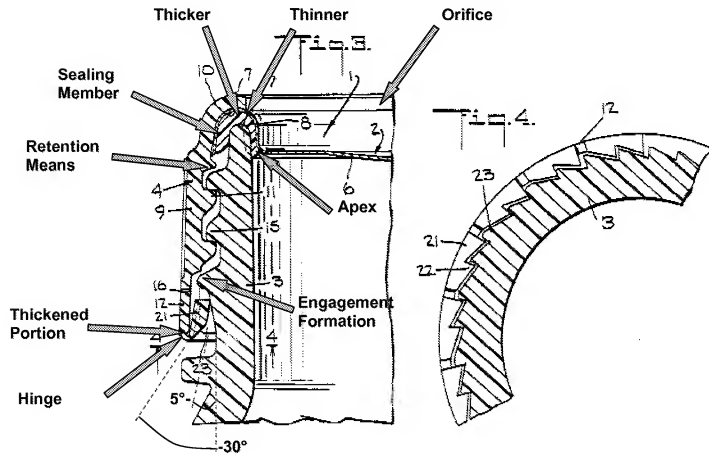
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-12, 17-24, and 26-37 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,813,561 (Ochs hereinafter).

10. In re claim 1, with reference to Figs. 3 and 4 below, Ochs discloses: A container (3) and a closure (1) for connection to said container, said closure including: an upper wall (10); a skirt (9) formed integrally with and extending downwardly from said upper wall, said skirt including a helically threaded section (11) on an internal face (4); a tamper-evident band (12) frangibly connected to said skirt, said tamper-evident band including an annular wall (12) from which extends a series of discretely spaced tabs (21) adapted such that when said closure is fully applied to said container said tabs face inwardly and upwardly; said container including: a neck with a helically threaded section (15) formed on an external surface and adapted to engage with said helically threaded section (11) on the internal face of the skirt of the closure so as to secure the closure to the container; a tamper-evident band engagement formation (see Fig. 3) located on said neck beneath said helically threaded section, said engagement formation including a downwardly and outwardly extending upper face to facilitate passage of said tabs over the engagement formation and reduce force on the tamper-evident band during application of the closure to the container, and three or more discretely located

engagement surfaces (23) in at least one quadrant of said neck for engagement with said tabs on said tamper-evident band; such that upon rotation of said closure to remove, said closure from said container said tabs engage with said engagement surfaces to resist rotation of said tamper evident band and facilitate breaking of the band from the skirt of the closure (column 3, lines 27-30).



11. In re claim 2, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said engagement surfaces (23) are adapted upon removal rotation of the closure to simultaneously engage with said tabs (21) (column 3, lines 27-30).

12. In re claim 3, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said tabs (21) cooperate with projections (23) on said container neck such that when said closure is fully applied said tabs are located between the neck projections (23) and lie against the neck of the container (as shown in Fig. 3).

13. In re claim 4, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said helically threaded sections on the neck (15) and/or closure (11) are segmented (the threads of Ochs all have a top segment, a vertical inner segment, and a bottom segment, wherein the segments are surfaces).

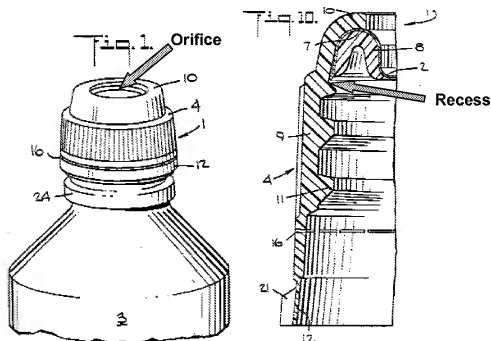
14. In re claim 5, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said closure further includes an annular sealing member (8) depending from said upper wall (10), said sealing member adapted to seal against the neck (17) of the container.

15. In re claim 6, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said annular sealing member (8) seals against an inner wall of the neck of the container.

16. In re claim 7, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said annular sealing member (8) includes a circumferentially extending apex (see Fig. 3) adapted to seat against said inner wall of the neck (17) portion of the container (3).

17. In re claim 8, with reference to the Figs. above, Ochs discloses the claimed invention including wherein the said closure includes a sealing member (see Fig. 3) adapted to seal against an outer surface of the neck (17).

18. In re claim 9, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said tamper-evident band (12) is connected to a lower surface of said skirt by a frangible section (16) formed by a series of circumferentially spaced ribs separated by slots (as seen in Figs. 1 and 10 below).



19. In re claim 10, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said ribs (16) are of a cross-section which provides sufficient strength to withstand typical forces which may be imparted during handling and/or application of the closure to the container neck (3) (column 3, lines 27-30 describes how the line of weakness 16 is to remain intact until acted upon by the turning

removal motion applied by a user, an action that inherently requires sufficient strength in the line of weakness to prevent premature separation).

20. In re claim 11, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said tabs (21) are connected to the lower surface of the annular wall (12) by means of a hinged section (see Fig. 3).

21. In re claim 12, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said tamper-evident band includes a thickened section (see Fig. 3) at the hinge point such that when the closure (1) is fully applied to the container the angle between the tab (21) and the neck of the container is approximately five degrees or less (see angle noted in Fig. 3).

22. In re claim 17, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said neck of the container further includes an annular bead (see Fig. 3) located below said threaded section (15) and extending radially outwardly from said external surface of the neck.

23. In re claim 18, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said ramped projections (23) extend downwardly from said bead.

24. In re claim 19, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said projections (23) on the neck of the container (3) form at least part of a tamper bead.

25. In re claim 20, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said closure is moulded such that the angle between the



tabs (21) and the tamper evident band (12) is in the range of 0 to 50 degrees (see Fig. 3).

26. In re claim 21, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said closure is moulded such that the angle between the tabs (21) and the tamper evident band (12) is in the range of 0 to 45 degrees (see Fig. 3).

27. In re claim 22, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said closure is moulded such that the angle between the tabs (21) and the tamper evident band (12) is approximately 30 degrees (see Fig. 3).

28. In re claim 23, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said closure includes a receptacle (2 and 8) depending from said upper wall, said receptacle including an open end.

29. In re claim 24, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said receptacle (2 and 8) is cylindrical in shape (see Fig. 1 above).

30. In re claim 26, with reference to the Figs. above, Ochs discloses the claimed invention including wherein walls of the receptacle are tapered (at 8) such that the walls are thicker at the point where the receptacle joins the upper wall (10) of the closure and are thinner at the open end of the receptacle (see Fig. 3).

31. In re claim 27, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said closure includes a retention means (see Fig. 3)

depending from an inner surface of said upper wall (10) for engaging and retaining an article (2 and 8) on said inner surface of said upper wall (10).

32. In re claim 28, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said retention means takes the form of one [or more clips or] projection[s] (see Fig. 3).

33. In re claim 29, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said retention means takes the form of an annular flange (see Fig. 10) depending from said inner surface of said upper wall (10).

34. In re claim 30, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said retention means takes the form of one [or more] recess (see Fig. 10) formed in said inner surface of said upper wall (10).

35. In re claim 31, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said retention means is integrally formed in said inner surface (see Fig. 10) of said upper wall (10).

36. In re claim 32, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said article (2 and 8) takes the form of a receptacle, cup, or disc (the article 2 and 8 of Ochs is considered all three).

37. In re claim 33, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said upper wall (10) of said closure includes a dispensing orifice (see Figs. 1 and 3).

38. In re claim 34, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said dispensing orifice is sealed with a sealing cover (2 and 8).
39. In re claim 35, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said sealing cover (2 and 8) is removable and replaceable on said closure (1).
40. In re claim 36, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said sealing cover includes an annular sealing formation (8) which engages and seals said dispensing orifice.
41. In re claim 37, with reference to the Figs. above, Ochs discloses the claimed invention including wherein said annular sealing formation (8) depends from an inner surface of an upper wall (at 7) of said sealing cover (2).

***Claim Rejections - 35 USC § 103***

42. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

43. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

44. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ochs as applied to claim 1 above, and further in view of U.S. Patent No. 5,038,951 (Rizzardi hereinafter).

45. In re claim 13, with reference to the Figs. above, Ochs discloses the claimed invention except wherein said closure further includes a dispensing means for dispensing one or more additives into the container.

46. However, with regards to the "means for dispensing one or more additives into the container," this limitation meets the three-prong test per MPEP 2181 and thereby invokes 35 USC 112 6th paragraph. In the instant specification, pages 13-14, lines 31-26, the "means for dispensing" is shown in Fig. 1 of Rizzardi below, which discloses a container closure with a frangible tamper evidence band and means for dispensing an additive into the container including a plunger (8), a breakable bottom (3), which together create a sealed reservoir (2) (Col. 2, lines 30-42). The dispensing means in Rizzardi are considered to be an equivalent to applicant's means for dispensing because they perform the same function in substantially the same way and produce substantially the same result as the corresponding element in applicant's specification. See MPEP 2183.

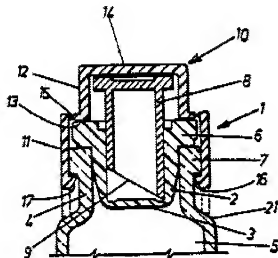


FIG. 1

47. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the dispensing means of Rizzardi with the container closure of Ochs for the purposes of dispensing a substance from an internal reservoir into the container as taught by Rizzardi.

48. In re claim 14, with reference to the Figs. above, Ochs in view of Rizzardi disclose the claimed invention including wherein said dispensing means (2, 3, 8) depends from said upper wall (14) of said closure.

49. In re claim 15, with reference to the Figs. above, Ochs in view of Rizzardi disclose the claimed invention including wherein dispensing means (2, 3, 8) includes a sealed housing (2, 8) within which said one or more additives are contained.

50. In re claim 16, with reference to the Figs. above, Ochs in view of Rizzardi disclose the claimed invention including wherein dispensing means includes a plunger

(8) located within said housing for ejection of said one or more additives from said sealed housing into the container.

51. Claims 25 and 38 are rejected under 35 U.S.C. 103(a) as being obvious over Ochs.

52. In re claim 25, with reference to the Figs. above, Ochs discloses the claimed invention except wherein said receptacle is integrally formed in the closure.

53. However, Ochs discloses wherein the receptacle (2, 8) is retained inside the closure (1) by the retaining means (see Fig. 10).

54. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have formed the receptacle of Ochs integrally with the closure, as it was already taught that the receptacle be fixed to the closure for the purposes of reducing the number of components in the closure.

55. In re claim 38, with reference to the Figs. above, Ochs discloses the claimed invention except wherein the closure is explicitly designed according the claimed formula. In short, the formula exhibits the limitation that container remained in a sealed state until the tamper band has been separated from the closure cap.

56. Although Ochs does not explicitly disclose the same formula, it does however disclose a condition in which a sealing cap creates an audible click sound when the vacuum inside the container has been broken. Ochs also discloses that the purpose of the tamper ring disclosed is to provide a visual indication of the same condition, which the examiner interprets as also occurring simultaneously with the breaking of the seal

(which is the same as the "or equal to" limitation necessitated by the  $\geq$  operator following G).

57. It is therefore implied that the closure of Ochs would be designed according to the claimed formula in order to remain sealed until the tamper band has been separated providing positive evidence that the seal has been broken for the purposes of maintaining the safety of the closure. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have designed the closure of Ochs according to the formula in order to achieve the described in Ochs, while factoring in all of the minute rotations allowed by gaps created through material properties and manufacturing tolerances as was known in the art.

### ***Conclusion***

58. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,457,438 to Vartlet et al. discloses a tamperproof closure with a sealing structure engaging the inside of the container neck. U.S. Patent No. 4,738,370 to Urmston et al. discloses a segmented thread on the inner surface of a closure member. U.S. Patent No. 5,020,682 to Dutt discloses a threaded closure member with a dispensing orifice and a plunger member retained in the closure.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims

"define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is (571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, Off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a



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/Andrew T. Kirsch/

Examiner, Art Unit 3781

/Anthony D Stashick/  
Supervisory Patent Examiner, Art  
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